IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7776 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMABEN NANJIBHAI KOLI

Versus

STATE OF GUJARAT

Appearance:

MR SHAKEEL A QURESHI for Petitioner

MR UR BHATT AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 07/09/2000

ORAL JUDGEMENT

The petitioner detenu has, by filing this writ petition under Art.226 of the Constitution of India, challenged the legality and validity of order of detention dt. 1.4.2000 passed by Respondent No.2 which he has passed in exercise of powers conferred upon him

under Sec.3(2) of the Gujarat Prevention of Antisocial Activities Act, 1985 (for short "the Act").

2. As per the papers of grounds of detention, it is the case of the detaining authority that petitioner detenu is a "bootlegger" within the meaning of Sec.2(b) of the Act and that his activities are prejudicial to the maintenance of public order. Detaining authority has stated about four cases under the Bombay Prohibition Act lodged against the detenu. Out of that four cases, three cases are shown as pending for trial in Criminal Court, while one criminal case is pending under investigation with Investigating Officer.

3. The respondents have not filed any affidavit-in-reply in reply to the petition filed by the petitioner. This Court has in Special Civil Application No.6322 of 1999 which has been decided on 11.2.2000 deprecated the practice of not filing affidavit-in-reply in such type of cases. Thus, it appears that the respondents have not controverted the grounds under which the said order of detention has been attacked and challenged by the petitioner in this writ petition.

4. Shri Kureshi, learned advocate for the petitioner has argued that in this case, the petitioner had made a representation to Chief Secretary, Home Department, Gandhinagar on 7th July, 2000 and it has been received by the concerned authority on 11.7.2000. Thereafter the Government has considered the said representation on 18.7.2000 and thus there is a considerable delay of seven days in deciding the said representation made by the detenu against the order of detention. It is well settled legal position that the concerned authority ought to have decided the representation as early as possible, on receipt of the representation. Here in this case, the authority has taken a period of seven days to decide the said representation. Delay can be there for deciding the representation, but that delay is required to be explained by the concerned officer. Here in this case, none of the respondents has filed affidavit-in-reply to explain this delay, and therefore, valuable right of the petitioner-detenu has been violated, and therefore, the order of detention is bad in law and illegal.

5. Shri Kureshi has placed reliance on the case of PARESH @ MANISHKUMAR HASMUKHBHAI TALASIYA Vs. DISTRICT MAGISTRATE, SURAT AND OTHERS, reported in (2000) 1 GLH (UJ) 8. No doubt, this case is for detention under prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980, but principle is

equally applicable to this case. In that case, there was a delay for consideration of representation made by the detenu. No explanation was given by Central Government for the period from 15.2.1999 to 23.2.1999 i.e. for about 8 days. Here in this case, delay is of about seven days, and as this delay is not explained. Mr. Kureshi has placed reliance on the case of RAJAMMAL Vs. STATE OF TAMIL NADU AND ANOTHER, reported in AIR 1999 SC 684. In the above cited case, the Hon'ble Supreme Court held that "in other words, it is for the authority concerned to explain the delay, if any, in disposing the representation. It is not enough to say that the delay was very short. Even longer delay can as well as be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned". In view of the above, the detention cannot be permitted to operate further. Keeping in mind the above legal position for non-explanation of delay for deciding representation, the order of detention dt.1st April, 2000 challenged in this Writ Petition is bad in law and illegal, and therefore, it requires to be quashed and set aside.

6. In view of what is stated hereinabove, this writ petition is allowed. The order of detention dt. 1st April, 2000 passed by Respondent No. 2 requires to be quashed and set aside. Accordingly, it is quashed and set aside. The detenu is ordered to be released forth with, if she is not required to be detained further for any criminal case or proceedings. Rule is made absolute accordingly. Direct Service is permitted.

Date: 7.9.2000. (H.H.MEHTA,J.)
ccshah